Supreme Court, U.S.
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No. 02 ___

IN THE

Supreme Court of the United States

GENERAL MOTORS CORPORATION,
Petitioner,

v.

SHEILA BLACK and CATHERINE LESTER,
individually and on behalf of all others similarly situated,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Where an action is properly removed from state court based on federal diversity jurisdiction, but is remanded by the federal district court based on grounds that the district court lacked authority to consider and on events that occurred after removal, is that remand subject to appellate review?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE

General Motors Corporation ("General Motors") has no parent, and no publicly held company owns 10% or more of General Motors' stock.

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BASIS OF JURISDICTION OF THE COURT

The Order appealed from was entered by the United States Court of Appeals for the Seventh Circuit on January 31, 2003, dismissing General Motors' appeal of a remand order for purported lack of jurisdiction pursuant to 28 U.S.C. § 1447(d). This petition for a writ of *certiorari* is filed within ninety days of that Order, pursuant to Supreme Court Rule 13 and 28 U.S.C. § 2102(c). Jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1). The jurisdiction of the Seventh Circuit to hear General Motors' appeal from the United States District Court for the Southern District of Illinois is the subject of this petition for a writ of *certiorari*, as set forth more fully herein.

STATUTE INVOLVED

The statute at issue is 28 U.S.C. § 1447 ("Procedure after removal generally"), which provides:

> (a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.
>
> (b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.
>
> (c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.
>
> (d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.
>
> (e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

STATEMENT OF THE CASE

Section 1447(d), 28 U.S.C., bars appellate review of an order remanding an action from federal to state court after removal. Beginning with *Thermtron Products v. Hermansdorfer*, 423 U.S. 336 (1976), however, this Court has held that section 1447(d) is not intended to preclude review of every remand order, but only those remand orders based upon statutory grounds. Thus, under *Thermtron*, section 1447(d) does not bar appellate review of a remand order that is based on grounds that the district court lacks authority to consider.

A district court has no authority to consider post-removal events when determining if the case should be remanded to state court. Some federal courts of appeals, relying on *Thermtron* and its progeny, have held that section 1447(d) does not preclude appellate review if a district court remands on the basis that post-removal events have divested it of subject matter jurisdiction.

This case involves the appeal of a remand based on post-removal events and, thus, based on grounds that the district court lacked authority to consider. Plaintiffs Sheila Black and Catherine Lester filed an Amended Class Action Complaint in an Illinois state court alleging that the seat belt buckles in certain General Motors vehicles are defective. General Motors did not initially remove the action to federal court because the Amended Complaint did not indicate that the amount in controversy needed $75,000. Subsequently, however, both named plaintiffs testified at deposition that the action seeks injunctive relief requiring General Motors to develop a replacement buckle and to recall the vehicles to replace the allegedly defective buckles. It was uncontested in the district court below that the cost to General Motors of complying with that relief would exceed $75,000, even if awarded as to just one plaintiff. Accordingly, within thirty

days of the deposition testimony, General Motors timely removed the action to the United States District Court for the Southern District of Illinois.

Plaintiffs moved to remand the case. They did not dispute what they had testified at deposition, and they did not challenge the fact that the injunctive relief would cost General Motors more than $75,000 even if awarded as to only one plaintiff. Instead, plaintiffs' counsel stated in the motion to remand that the plaintiffs did not mean what they said, and that they really did not seek a recall. Plaintiffs' counsel urged the district court to ignore the deposition testimony and, instead, rely on his post-removal statement that no recall was sought. The district court accepted plaintiffs' counsel's post-removal disavowal of plaintiffs' own deposition testimony and remanded the action to state court.

General Motors appealed the remand to the Seventh Circuit, citing the authority that allows review of a remand based on post-removal events. The Seventh Circuit dismissed the appeal for lack of jurisdiction based on section 1447(d). In so doing, the Seventh Circuit joined the Fifth Circuit in rejecting the rule that *Thermtron* allows appellate review of a remand based on post-removal events.

This Petition for Writ of *Certiorari* asks the Court to resolve the Circuit split and clarify the scope of the *Thermtron* exception to section 1447(d). Because the jurisdiction of the Seventh Circuit is the question presented by this Petition, the basis for that jurisdiction is set forth in the Argument, *infra*, instead of here. *See* Sup. Ct. R. 14(g)(ii).

ARGUMENT

All requirements for federal diversity jurisdiction were present at the time that General Motors removed this action to federal court. The named plaintiffs testified that the relief they seek includes an injunction requiring General Motors to

develop a replacement buckle and recall all vehicles in the State of Illinois equipped with the allegedly defective buckle. There was no dispute that this relief, even if awarded as to only one plaintiff, would cost General Motors more than $75,000, thus meeting the federal jurisdictional minimum.

The district court ignored the named plaintiffs' testimony. Instead, the district court relied on the post-removal statements of plaintiffs' counsel who, in an effort to avoid the removal, argued on remand that plaintiffs did not mean what they said, and that plaintiffs did not seek a recall. The district court then remanded the action to state court based on this post-removal statement.

General Motors appealed the remand to the Seventh Circuit. General Motors acknowledged that 28 U.S.C. § 1447(d) bars appellate review of a remand order based on lack of subject matter jurisdiction as defined in 28 U.S.C. § 1447(c). General Motors also stated, however, that precedent of both the Seventh Circuit and other Circuits allows review when the purported lack of subject matter jurisdiction is based on events arising after removal. The Seventh Circuit, however, held that no such jurisdiction existed. The Seventh Circuit's decision thus aligned it with the Fifth Circuit, which also has denied review of a remand order based on post-removal events. The Circuits are split on the important issue of whether the exception to section 1447(d) enunciated in *Thermtron* applies to review of remand orders based on post-removal events.

I. AT THE TIME OF REMOVAL, DIVERSITY JURISDICTION REQUIREMENTS WERE MET, AND THE CASE WAS PROPERLY REMOVED.

A. The Prayer for Relief Did Not Reveal the Relief Sought by Black and Lester.

Plaintiff Black [1] initiated this case by filing a "Class Action Complaint" in the Circuit Court, Twentieth Judicial Circuit, St. Clair County, Illinois on January 25, 2002. The Complaint alleged that certain General Motors vehicles equipped with "Type 6" seatbelt buckles are defective, and that GM failed to disclose the alleged defect in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act. (App. 50a-51a). Black did not claim that the alleged defect had actually manifested itself in her vehicle, causing damages; instead, she claimed that Type 6 buckles "could" initially unlatch "during foreseeable vehicular accidents." The Complaint asserted claims on behalf of all GM vehicle owners in Illinois with Type 6 buckles, even if they, like Black, had never had any problem with the seat belts or seat belt buckles.

The Prayer for Relief in the original Complaint was ambiguous as to the relief sought. Therefore, the Complaint, on its face, did not disclose any basis from which GM could ascertain whether the amount in controversy exceeded $75,000 and whether the action could be removed to federal court. The Amended Complaint, filed on or about April 4, 2002, added a second named plaintiff, Catherine Lester, but otherwise contained the same ambiguous Prayer for Relief as the original Complaint. (App. 44a).

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[1] Subsequent to filing the Complaint, Sheila Black married the son of plaintiffs' counsel, Bruce Cook, and became known as Sheila Cook. For clarity, "Black" is used throughout the petition.

B. In Deposition Testimony, Plaintiffs Revealed That They Seek a Recall.

On July 18, 2002, both plaintiffs testified for the first time that the relief they seek in this case is an injunction requiring GM to develop a replacement buckle and establish a program to recall and replace the allegedly defective seat belt buckles. Sheila Black testified:

> Q: And so what you want the Court to do is to order General Motors to recall the seat belts and to do whatever it takes to fix them; is that right?
>
> A: That's correct.

(App. 31a). Likewise, Catherine Lester testified that she seeks an order requiring General Motors to develop a new buckle and to recall vehicles to retrofit them with the replacement buckle:

> Q: And can you tell me the relief you seek, what you want General Motors to do in connection with this lawsuit?
>
> A: Replace seat belts that appear to be defective.

(App. 29a). Each plaintiff's testimony also belied their counsel's post-removal statement that plaintiffs sought only money to have their buckles replaced. Lester testified that her vehicle had been totaled in an accident, and Cook testified that she had a defective transmission, was no longer using the vehicle, and was only retaining the vehicle for purposes of this lawsuit. Thus, money for a replacement buckle would be meaningless to the named plaintiffs.

C. General Motors Timely and Properly Removed the Action.

"Illinois practice, like that of the federal courts, does not limit the plaintiff's possible recovery to the amount of damages stated in its complaint." *BEM I, L.L.C. v. Anthropologie, Inc.*, 301 F.3d 548, 552 (7th Cir. 2002). General

Motors became aware through the plaintiffs' depositions, for the first time, that the relief sought in this action includes an injunction requiring the development of a new buckle and the recall and replacement of existing buckles. This relief, even if awarded as to only one plaintiff, would cost General Motors more than $75,000. Under Seventh Circuit precedent, federal diversity jurisdiction is appropriate where the cost to a defendant of complying with injunctive relief would exceed $75,000 in an "undivided interest" or even if awarded with respect to just one plaintiff. *See, e.g., Uhl v. Thoroughbred Tech. & Telecomm., Inc.*, 309 F.3d 978, 983-84 (7th Cir. 2002); *BEM I*, 301 F.3d at 553; *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 609 (7th Cir. 1997); *Trujillo v. Bridgestone-Firestone, Inc.*, 2000 WL 1690308, at *3 (N.D. Ill. Nov. 1, 2000); *Jacobson v. Ford Motor Co.*, 1999 WL 966432, at *2-3 (N.D. Ill. Sept. 30, 1999). Thus, General Motors learned through plaintiffs' depositions that this action met the federal minimum amount-in-controversy requirement.

Section 1446, 28 U.S.C., provides "If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." For purposes of this rule, a plaintiff's deposition testimony may constitute "other paper" to begin the clock running to remove an action that was not removable when initially filed. *See, e.g., Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 466 (6th Cir. 2002); *Addo v. Globe Life & Accident Ins. Co.*, 230 F.3d 759, 762 (5th Cir. 2000); *Huffman v. Saul Holdings LP*, 194 F.3d 1072, 1078 (10th Cir. 1999).[2]

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[2] *See also Effinger v. Philip Morris, Inc.*, 984 F. Supp. 1043, 1047 (W.D. Ky. 1997); *Riggs v. Continental Baking Co.*, 678 F. Supp. 236, 238 (N.D. Cal. 1988); *Smith v. Int'l Harvester Co.*, 621 F. Supp. 1005, 1007

On August 16, 2002, less than thirty days after learning that the relief sought met the federal amount in controversy requirement, GM timely removed this case to the Southern District of Illinois. In support of its removal, GM provided the affidavit of Hassan M. El-Sabeh, a GM engineer, establishing that the injunctive relief would cost in excess of $75,000, even if it were imposed as to just one plaintiff's vehicle. (App. 24a-25a). Neither the timing of GM's removal nor the El-Sabeh affidavit was challenged before the district court.

II. THE DISTRICT COURT REMANDED BASED ON ASSURANCES MADE AFTER REMOVAL.

Once in federal court, plaintiffs moved to remand. They did not challenge the fact that they had testified to seeking injunctive relief. Nor did they challenge GM's evidence that the cost of providing such relief would exceed $75,000 even as to a single plaintiff.

Instead, after removal, plaintiffs' counsel urged the district court to ignore the testimony of the named plaintiffs and rely on the vague Prayer for relief in the Amended Complaint and his post-removal statement that plaintiffs did not really seek a recall, arguing that "[w]hat the plaintiffs want out of this lawsuit and what they have asked for formally in their complaint are separate issues." (App. 21a). Counsel further asserted that the deposition testimony should be given no weight because "plaintiffs readily admit that they are relying totally on their counsel, and have not seen the complaint." (*Id.*).

The district court accepted plaintiffs' counsel's post-removal statements and remanded the case to state court. (App. 16a). It further upheld that remand on a motion for

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(D. Nev. 1985); *Brooks v. Solomon Co.*, 542 F. Supp. 1229, 1230 (N.D. Ala. 1982); *Gilardi v. Atchison, Topeka & Santa Fe Ry. Co.*, 189 F. Supp. 82, 85 (N.D. Ill. 1960).

reconsideration. (App. 8a). Although it recognized that it could consider the deposition testimony and other evidence on the record at the time of removal (App. 5a), the court nonetheless accepted plaintiffs' counsel's post-removal statements and the vague Prayer in the Amended Complaint. (App. 11a; *see also* App. 12a-13a; App. 7a).

In an attempt to bolster its remand, the district court also stated that, even if it allowed the deposition testimony regarding injunctive relief to control, remand still would be proper. (App. 7a). But here again, the district court relied on post-removal statements to change the circumstances as they existed at the time of removal. That is, at no point was any evidence put on record to contradict the fact that the injunctive relief sought would cost General Motors more than the federal jurisdictional threshold, even if awarded to only one plaintiff. Disregarding this, the district court allowed plaintiffs' counsel's post-removal embrace of the Amended Complaint to override the contrary evidence. Regarding the evidence of cost to General Motors, the court stated: "'[T]his evidence *is* disputed, as Plaintiffs' complaint specifically states that the cost of replacement will not exceed $400 per vehicle and that the Plaintiffs seek damages in an amount less than $1,000 each." (App. 6a). Again, at the time of removal, the only evidence concerning the cost of the injunctive relief sought by Black and Lester showed that it would exceed the federal jurisdictional minimum, even as to one plaintiff. The district court relied on the post-removal return to the Amended Complaint to change this evidence at the time of removal.

III. THE CIRCUITS HAVE SPLIT ON THE EXTENT OF THE *THERMTRON* EXCEPTION IN THESE CIRCUMSTANCES.

General Motors appealed the district court's remand to the Seventh Circuit. In its appeal, General Motors acknowledged that 28 U.S.C. § 1447(d) generally bars appellate review of

remand orders based on statutory grounds such as lack of subject matter jurisdiction. Nevertheless, General Motors pointed out, a remand order may be reviewed on appeal if it is based on grounds the district court has no discretion to consider. Events, statements, or stipulations that occur post-removal, some Circuits (including the Seventh Circuit, *see infra*) have held, are among those grounds that a district court has no discretion to consider. *See, e.g.*, *BEM I*, 301 F.3d at 552 (citing *Workman v. UPS*, 234 F.3d 998, 1000 (7th Cir. 2000)); *In re Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir. 1992).[3] Therefore, General Motors argued, the Seventh Circuit had jurisdiction to review the decision.

The Seventh Circuit refused to review the decision. Without further analysis, the Seventh Circuit stated:

> This court has consistently reminded litigants that an order remanding a case to state court based on a lack of subject matter jurisdiction is *not* reviewable on appeal, whether or not the decision is correct. *See, e.g.*, *Phoenix Container, L.P. v. Sokoloff*, 235 F.3d 352, 355 (7th Cir. 2000); *In re Continental Casualty Co.*, 29 F.3d 292, 293 (7th Cir. 1994).
>
> The district court's order in the present case remanded plaintiffs' case to state court because it lacked subject matter jurisdiction. The order, therefore, appears unreviewable.

In refusing to review the remand, the Seventh Circuit joined the Fifth Circuit but put itself at odds with that of the Eleventh Circuit, which has held that a remand based on events that occur after removal is subject to appellate review under the standards set forth in *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336 (1976).

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[3] Black and Lester did not file any such stipulation before removal and to this date have not stipulated not to seek the injunctive relief to which they testified.

A. The Law of Several Circuits Disagrees on Whether a Remand Based on Post-Removal Events May Be Reviewed.

A split of authority now exists among the Circuits as to whether a remand based on post-removal events is subject to appellate review. In *Poore v. American-Amicable Life Insurance Co.*, 218 F.3d 1287 (11th Cir. 2000), the Eleventh Circuit held that a remand based on a post-removal amendment of the relief sought could be reviewed on appeal. In that case, a class action premised on the sale of allegedly fraudulent life insurance policies, the minimum amount-in-controversy requirement was met by aggregating the punitive damages, and the defendant properly removed the action. Two weeks after removal, the plaintiffs filed an amended complaint, which deleted the claims for punitive damages and redefined the class to exclude any individual plaintiffs who wished to assert punitive damage claims or claims worth more than $75,000. Shortly after filing the amended complaint, the plaintiffs moved to remand. The district court found that, based on the amended complaint, the amount-in-controversy requirement was no longer met and the case was properly remanded for lack of subject matter jurisdiction. *See id.* at 1289.

The Eleventh Circuit held that, even though the district court had remanded for lack of subject matter jurisdiction, section 1447(d) did not bar review of the remand. The Eleventh Circuit held that, because the district court had ***no authority*** to consider a post-removal amendment when determining whether to remand, the decision was not based on any ground specified by section 1447(c):

> In this case, the district court determined it lacked diversity jurisdiction because the amount in controversy did not meet the jurisdictional minimum set forth in 28 U.S.C. § 1332. This determination would seem to fall directly under Section 1447(c), and Section 1447(d)

> would prevent review. However, . . . the district court exceeded its authority under § 1447(c) by relying upon a post-removal amendment to the complaint to determine the amount in controversy. Because the district court acted beyond the scope of its § 1447(c) authority, § 1447(d) does not act as a bar to appellate review.

Id. at 1291 (citing *In re Bethesda Mem. Hosp.*, 123 F.3d 1407, 1410 (11th Cir. 1997); *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 223 (3d Cir. 1995)).

Under the Eleventh Circuit's *Poore* decision, the district court's decision here is reviewable on appeal. Regardless of whether the district court thought that plaintiffs' counsel's post-removal statement divested it of subject matter jurisdiction, the district court had no authority to consider that post-removal statement, which directly conflicted with plaintiffs' own deposition testimony, and therefore the district court did not act within section 1447(c). Indeed, other Seventh Circuit decisions likewise have held that a remand order arising from a post-removal stipulation on damages is reviewable. *See In re Shell Oil Co.*, 970 F.2d 355 (7th Cir. 1992). *Cf. In re Amoco Petroleum Additives Co.*, 964 F.2d 706, 708 (7th Cir. 1992) ("[W]e understand *Carnegie-Mellon* to permit review when the district judge believes that removal was proper and that later developments authorize remand.").

By contrast, in *Linton v. Airbus Industrie*, 30 F.3d 592 (5th Cir. 1994), the Fifth Circuit explicitly rejected the argument that a remand based on post-removal events is beyond the scope of section 1447(c) and therefore reviewable. In that case, the defendant Airbus Industrie and its subsidiary Aeroformation were sued in state court. The defendants removed to federal court citing both federal question jurisdiction and diversity jurisdiction. After removal, the defendants entered a stipulation that rendered one plaintiff "stateless" for purposes of the litigation. The federal court, rejecting the claim of federal question jurisdiction, held that

the stipulation also destroyed complete diversity and therefore remanded the case. *See id.* at 595–96. The defendants appealed, arguing *inter alia* that the remand, based on a post-removal event, did not arise from a ground enumerated in § 1447(c) and therefore was subject to appellate review. The Fifth Circuit rejected their argument: "Turning to the merits of the Airbus Defendant's contention, we observe that—even if this stipulation can properly be considered a 'post-removal' event—we have twice before concluded that jurisdictional remands premised on post-removal events are not reviewable." *Id.* at 599 (footnote omitted) (citing *Tillman v. CSX Transp.*, 929 F.2d 1023, 1025 (5th Cir. 1991); *In re Merrimack Mut. Fire Ins. Co.*, 587 F.2d 642, 647-49 (5th Cir. 1978)).

With its decision denying review here, the Seventh Circuit appears to have joined the Fifth Circuit in holding that when a district court remands based on its perception that post-removal events divest it of jurisdiction, that remand may not be reviewed. In the Eleventh Circuit (and in the Seventh Circuit before now), such remand may be reviewed. General Motors seeks *certiorari* to reconcile these divergent paths of law.

B. *Certiorari* Here Will Clarify the Scope of the *Thermtron* Exception.

In addition, General Motors seeks *certiorari* to clarify the scope of the important *Thermtron* exception to section 1447(d)'s ban on review of remands. General Motors submits that under this Court's own precedent, that exception should be read to encompass remands based on post-removal events.

The rule of *Thermtron* is that section 1447(d)—"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise . . . ."—is not as broad as it seems. *Thermtron* held that section 1447(d)

bars review only of remands based on the grounds enumerated in section 1447(c). Thus, a district court's remand is reviewable if the reason for it is "not one of the considerations that Congress has permitted the district courts to recognize in passing on remand." *Thermtron*, 423 U.S. at 351. In *Thermtron*, the propriety of the defendants' removal was acknowledged, but the district court subsequently remanded the case because it felt its own crowded docket would delay review of the case. The Supreme Court held that review was available, as the district court had not acted on a reason specified in section 1447(c): "Because the District Judge remanded a properly removed case on grounds that he had no authority to consider, he exceeded his statutorily defined power; and issuance of the writ of mandamus was not barred by § 1447(d)." *Id.* Later, the Court clarified that section 1447(c) bars review of a remand based on any proper statutory ground, not just those specified in section 1447(c). *See Things Remembered v. Petrarca*, 516 U.S. 124, 128 (1995).

Courts have uniformly concluded that Congress intended that whether the requirements for removal to federal court are present must be determined at the time of removal, not thereafter. *See, e.g., Rogers v. Wal-Mart Stores, Inc.*, 230 F.3d 868, 872 (6th Cir. 2000), *cert. denied*, 532 U.S. 953 (2001); *Chase v. Shop 'N Save Warehouse Foods*, 110 F.3d 424, 429 (7th Cir. 1997); *S.W.S. Erectors v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996); *Pfeiffer v. Hartford Fire Ins. Co.*, 929 F.2d 1484, 1488 (10th Cir. 1991). A remand based on post-removal events—in this case, a remand based on post-removal statements of plaintiffs' counsel which directly conflict with pre-removal deposition testimony from the named plaintiffs themselves as to the relief they seek—is therefore based on grounds the district court has no authority to consider, and would appear to fit within those decisions considered reviewable under *Thermtron*.

CONCLUSION

General Motors properly removed this case from St. Clair County, Illinois, to the United States District Court for the Southern District of Illinois, based on the testimony of plaintiffs Black and Lester that the action seeks injunctive relief worth more than $75,000 even if awarded as to only one plaintiff. The district court, however, allowed plaintiffs' counsel to disavow that testimony after removal and instead embrace only the Amended Complaint's Prayer.

The Circuits have split on whether such a remand based on post-removal events may be reviewed on appeal. This question is important to determining the scope of the *Thermtron* exception to 28 U.S.C. § 1447(d)'s bar to appellate review of remand orders. Accordingly, General Motors requests the Court to grant this Petition for Writ of *Certiorari* on the issue of whether the Seventh Circuit had jurisdiction to hear General Motors' appeal of the remand order.

Respectfully submitted,

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May 1, 2003

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

[January 31, 2003]

No. 02-4253

SHEILA BLACK and CATHERINE LESTER,
individually and on behalf of all others similarly situated,
Plaintiffs-Appellees,

v.

GENERAL MOTORS CORPORATION,
Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Illinois

No. 02 C 952

David R. Herndon, Judge.

ORDER

Before: Hon. Frank H. Easterbrook, *Circuit Judge*, Hon. Terence T. Evans, *Circuit Judge*, Hon. Ann Claire Williams, *Circuit Judge*.

On consideration of the jurisdictional memoranda filed by the parties and review of the short record,

IT IS ORDERED that this appeal is DISSMISSED for lack of jurisdiction. 28 U.S.C. § 1447(d).

This court has consistently reminded litigants that an order remanding a case to state court based on a lack of subject matter jurisdiction is *not* reviewable on appeal, whether or not the decision is correct. *See, e.g., Phoenix Container, L.P. v. Sokoloff*, 235 F.3d 352, 355 (7th Cir. 2000); *In re Continental Casualty Co.*, 29 F.3d 292, 293 (7th Cir. 1994).

The district court's order in the present case remanded plaintiffs' case to state court because it lacked subject matter jurisdiction. The order, therefore, is unreviewable.

IN THE UNITED STATES DISTRICT COURT FILED
FOR THE SOUTHERN DISTRICT OF ILLINOIS

[Filed Nov. 12, 2002]

No. 02-CV-00952-DRH

SHEILA BLACK and CATHERINE LESTER, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

MEMORANDUM AND ORDER

HERNDON, *District Judge*:

Before the Court is General Motors Corporation's ("GM") motion to reconsider or, in the alternative, for a stay of the remand order (Doc. 21). On October 4, 2002, the Court entered an order granting Plaintiffs' motion to remand this case back to the Circuit Court of St. Clair County, Illinois (Doe. 19). GM filed this motion to reconsider on October 21, 2002.

Strictly speaking, a motion to reconsider does not exist under the Federal Rules of Civil Procedure. *Hope v. United States*, 43 F.3d 1140,1142 (7th Cir. 1994), *cent. denied*, 515 U.S. 1 132 (1995). Despite this fact, such motions are routinely presented, and this Court will consider them if timely filed. If filed within ten days of the entry of a judgment or order in the case, the motions are construed as motions to alter or amend under FEDERAL RULE OF CAL PROCEDURE 59(e). *See Britton v. Swift Transp. Co., Inc.*, 127 F.3d 616, 618 (7th Cir. 1997) ("the key factor in determining whether a 'substantive' motion is cognizable under Rule 59

or 60 is its timing"); *Mendenhall v. Goldsmith*, 59 F.3d 685, 689 (7th Cir.), *cent. denied*, 516 U.S. 1011 (1995) ("any post-judgment substantive motion that is made within ten days of the entry of judgment is deemed a Rule 59(e) motion."). GM's motion to reconsider was filed within ten days of the Order it challenges. Thus, the Court will apply Rule 59(e).

Rule 59(e) motions to reconsider serve the limited function of allowing litigants "to direct the district court's attention to newly discovered material evidence or a manifest error of law or fact." *Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir.1996). *See also Divan v. Krull Elec. Co., Inc.*, 194 F.3d 845, 850 (7th Cir. 1999). The Seventh Circuit has clarified:

> While Rule 59(e) permits parties to bring to the court's attention errors so they can be corrected without the costs associated with appellate procedure, "(t)he rule does not provide a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party to introduce new evidence or advance arguments that could or should have been presented to the district court prior to judgment."

Popovits v. Circuit City Stores, Inc., 185 F.3d 726, 730 (7th Cir. 1999).

GM has neither presented newly discovered evidence, nor identified a manifest error of law or fact. GM asserts that the Court's decision is "squarely contrary" to the Seventh Circuit's decision in *BEM I, L.L.C. v. Anthropologic, Inc.*, 301 F.3d 548 (7th Cir. 2002). In *BEM I*, BEM sued Anthropologic in state court for $48,000 allegedly owed it and for an order of eviction. *Id.* at 550. Anthropologic removed the case to federal court, and BEM argued that removal was improper.[1] The court stated that the relevant date for

[1] The court noted that although BEM never officially amended its complaint to seek another $36,000 allegedly owed it, BEM continued to claim that the additional rents were due, increasing the damages actually

determining whether the amount in controversy is present is the date of removal, not the date of the original complaint in state court. *Id.* at 552. However, the court continued, stating that "Celvents subsequent to removal that merely reveal whether the required amount was in dispute on the date of filing, rather than alter the current amount in controversy, can be considered in deciding what that original amount in controversy was." *Id.*

GM argues that the Court accepted Plaintiffs' contention that it was limited to the complaint's prayer for relief in determining the amount in controversy. That simply is not true.[2] The Court recognized that it could consider other materials relevant to the amount in controversy at the time of removal. *See BEM I*, 301 F.3d at 552. Indeed, the Court *did* consider those materials, making specific reference to the deposition testimony of Plaintiffs Black and Lester that GM cited in support of its argument. The Court found that GM's argument was weak, as, contrary to GM's argument, the deposition testimony did not "unequivocally" show that Plaintiffs Black and Lester requested injunctive relief.[3] Additionally, Plaintiffs' complaint does not seek injunctive relief; rather, it seeks money damages in an amount sufficient to purchase replacement seat belt buckles. However, the

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sought from $48,000 to $84,000. *Id.* This itself was enough to get over the $75,000 jurisdictional amount in controversy.

[2] GM appears to take issue with the Court's statement that the *BEM I* court's holding was not as broad as GM contended it was. The Court made this statement merely to inform GM that it believed GM had *overstated* the holding of BEM *I.* This did not affect the Court's decision, as the Court *did* consider the deposition testimony GM presented.

[3] Plaintiff Black testified that she "would hope that they would recall all these seat belts" and "do whatever it takes to fix them." (Doe. l, ¶ 6) (Black Dep. at 11). Additionally, Plaintiff Lester testified that she did not "know all the steps that would be involved in order to make it safer." (Doc.1,' 6) (Lester Dep. at 5).

Court, in its analysis, did not stop there. The Court continued to address the "injunctive relief' GM claimed Plaintiffs seek. The Court concluded that even the cost of the "injunctive relief' that Plaintiffs allegedly seek do not get them over the jurisdictional amount in controversy. This is yet another aspect of the Court's Order that GM attacks.

GM asserts that the Court erred in reaching the conclusion that the injunctive relief Plaintiffs seek does not satisfy the amount in controversy requirement. GM asserts that removal is proper where the cost to the defendant of complying with injunctive relief would exceed the $75,000 jurisdictional threshold. It is true that the amount in controversy is satisfied if the cost to a defendant exceeds $75,000. *See In Re Brand Name Prescription Drug Antitrust Litig.*, 123 F.3d 599, 609-610 (7th Cit. 1997). However, as the Court pointed out in its Order, and as GM still apparently misunderstands, the cost to a defendant must be viewed on a per-Plaintiff basis, i.e. the cost to a defendant to fix an *individual* plaintiffs car must exceed $75,000. *See id; Screiber v. Lugar*, 518 F.2d 1099, 1102 (7th Cir. 1975). This is not a case of a common and undivided interest, as the cases cited by GM undoubtedly were. *See Trujrllo v. Brrdgestone-Firestone, Inc.*, 2000 WL 1690308, *3 (N.D. Ill. Nov. 1, 2000); *Jacobson v. Ford Motor Co.*, 1999 WL 966432 (N.D. Ill. Sept. 30, 1999).

GM asserts that the cost to it of fixing only a single plaintiffs vehicle would exceed $75,000. GM argues that it "offered undisputed evidence that the cost to recall the buckles would exceed $75,000 even if only required for a single plaintiffs vehicle." (Doc. 22, p. 6).[4] However, this evidence is disputed, as Plaintiffs' complaint specifically states that the cost of replacement will not exceed $400 per vehicle and that the Plaintiffs seek damages in an amount less than

[4] This was presented in an affidavit of Hassan M. El-Sabeh (Doc.17, Exh. D). 5.

$1,000 each (Doe. 2, p.5). GM has not met its burden to establish jurisdiction by competent *proof. See Chase v. Shop 'N Save Warehouse Foods, Inc.*, 110 F.3d 424, 427 (7th Cir. 1997).

GM attempts to distinguish *Phillips v. Ford Motor Co.*, 2000 WL 1231724 (S.D. 111. July 7, 2000), arguing that in *Phillips*, there was no direct admission from the plaintiff that the class sought a recall and no evidence that cost of the relief would exceed $75,000. Because this Court decided the *Phillips* case, the Court has the benefit of having the case file on hand. Contrary to GM's contention, Ford *did* offer evidence that the cost of the relief sought would exceed $75,000. In fact, Ford offered an affidavit, very similar to that offered by GM in this case, stating that the cost of complying with the relief requested would exceed $75,000. *See Phillips v. Ford Motor Co.*, No. 99-CV-0964 1000 WL 1231724 (S.D. Ill.) (Doc.1, Exh. J). Additionally, as discussed above, the Court believes that GM's evidence that Plaintiffs "unequiv= ocally" seek injunctive relief is weak.

GM emphasizes the fact that Plaintiffs, in their motion, do not dispute that they seek injunctive relief. GM asserts that Plaintiffs' sole argument in their motion for remand is that the Court is limited to the complaint's prayer for relief in determining the amount in controversy. However, what GM fails to recognize is that the parties are disputing *the subject matter* jurisdiction of this Court. Because of this, the Court can consider the jurisdictional issue sua *sponte* and may remand to state court based on reasons other than those asserted in a party's motion. *See Tylka v. Gerber Prods.* Co., 211 F.3d 445, 447 (7th Cir. 2000).

Because the removal statute is narrowly construed and doubts concerning removal are resolved in favor of remand, the Court finds that GM has failed to assert any newly discovered facts or manifest errors of law or fact. *See Doe*

v. Allied-Signal, Inc., *985* F.2d 908, 911 (7th Cir.1993). Accordingly, the Court DENIES GM's motion to reconsider (Doc. 21).

GM's motion to stay the Court's remand order is moot because there is nothing left for the Court to stay. GM did contact the Court after the Court issued its remand order, requesting only that the file be held in the District Court until GM filed its motion to reconsider.[5] The Court informed GM that District Court files always remain in the District Court, and the District Court transmits a certified copy of the remand Order to the state court. That is precisely what the Court did in this case. The Court, at no time, assured GM that the actual *remand Order* would be held at the District Court until the motion to reconsider was filed.[6] Accordingly, the Court DENIES GM's alternative motion to stay its remand Order (Doc. 21).

IT IS SO ORDERED.

Signed this 12th day of November, 2002.

/s/ David R. Herndon
DAVID R. HERNDON
United States District Judge

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[5] GM informed the Court that it requested the file remain at the District Court because it did not want to have to pick up the file from the Circuit Court of St. Clair County. The conversation never included a discussion that GM sought that the Court hold its *Order* remanding the case.

[6] The Court's policy is to send a certified copy of the remand Order to the state court when the Order is entered on the Court's docket. Furthermore, parties are not informed of the Court's decision until the Order is docketed on the Court's docket. Thus, the Court could not have, pursuant to the Court's policy, held the remand Order until the Court ruled on GM's motion to reconsider. At the time of GM's cpnversation with the Court, the certified copy of the remand Order had already been sent to the Circuit Court of St. Clair County. However, the file remained at the district Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

[Filed Oct. 4, 2002]

No. 02 CV-00952-DRH

SHEILA BLACK and CATHERINE LESTER,
Individually and on behalf of all others similarly situated,
Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,
Defendant.

MEMORANDUM AND ORDER

HERNDON, District Judge:

I. Introduction

On January 31, 2002, Plaintiffs filed this class action lawsuit in the Circuit Court of St. Clair County, Illinois, seeking damages under the Illinois Consumer Fraud Act (Doc. 2), Plaintiffs allege that Defendant concealed a major defect in its seat belt buckles in certain vehicles, causing the buckles to open in some accidents. Plaintiffs, in their complaint, seek damages in an amount sufficient to purchase inertial release resistant seat belt buckles to replace the defective buckles, punitive or exemplary damages to the extent permitted by the Illinois Consumer Fraud Act not to exceed three times the compensatory award requested, and attorneys' fees in an amount not to exceed one-third of the total amount of compensatory and punitive damages per individual class member.

Defendant filed a notice of removal on August 16, 2002, asserting diversity jurisdiction (Doc. 1). Subsequently, on

August 29, 2002, Plaintiffs filed a motion to remand this case to state court based on lack of subject matter jurisdiction (Doc. 6). Defendant objects to the remand motion. Having reviewed the pleadings and the applicable case law, the Court finds that it lacks subject matter jurisdiction and grants Plaintiffs' motion to remand (Doc. 6).

II. Analysis

Defendant does not contend that Plaintiffs' action presents any federal question. Rather, Defendant asserts jurisdiction only under the federal diversity statute. That statute requires complete diversity between the parties plus an amount in controversy that exceeds $75,000, exclusive of interest and costs. 28 U.S.C. § 1332. Complete diversity means that "none of the parties on either side of the litigation may be a citizen of the state of which a party on the other side is a citizen." *Howell v. Tribune Entm't Co.*, 106 F.3d 215, 217 (7th Cir. 1997). Here, the parties do not dispute that complete diversity exists.[1] Therefore, the question is whether Plaintiffs' action satisfies the amount in controversy requirement of § 1332(a).

The removal statute is construed narrowly, and doubts concerning removal are resolved in favor of remand. *Doe v. Allied-Signal, Inc.*, 985 F.2d 908, 911 (7th Cir. 1993). To remove an action used on federal diversity jurisdiction, a defendant must establish the elements by competent proof showing a reasonable probability that such jurisdiction exists. *Chase v. Shop 'N Save Warehouse Foods, Inc.*, 110 F.3d 424, 427 (7th Cir. 1997).

For a defendant to successfully remove a class action based on diversity jurisdiction, at least one of the named plaintiffs must have a claim that exceeds the $75,000 threshold. In *re*

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[1] Plaintiffs Black and Lester are citizens of Illinois. Defendant is incorporated in Delaware and has its principal place of business in Michigan. Therefore, Defendant is a citizen of both Delaware and Michigan for purposes of the federal diversity statute.

Brand Name Prescription Drugs Antitrust Litig., 123 F.3d 599, 607 (7th Cir. 1997); *Garble v. Daimler Chrysler Corp.*, 211 F.3d 407, 409 (7th Cir. 2000). If one named plaintiff exceeds that amount, any other named plaintiffs "and the unnamed class members can, by virtue of the supplemental jurisdiction conferred on the federal district courts by 28 U.S.C. § 1307, piggyback on that plaintiffs claim." *Brand Name Prescription Drugs*, 123 F.3d at 607.

The status of the case as disclosed by the plaintiffs complaint is controlling on the issue as to whether the case is removable. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 291 (1938). If the face of the complaint establishes that the suit cannot involve the necessary amount, the case should be remanded. *Id.* at 29192. "Accepted wisdom" provides that the plaintiffs evaluation of the stakes must be respected when deciding whether a claim meets the amount in controversy. *Barbers, Hairstyling for Men & Women, Inc. v. Bishop*, 132 F.3d 1203, 1205 (7th Cir. 1997) (citing St. Paul Mercury, 303 U.S. at 289).

The Court finds that Defendant failed to show by competent proof a reasonable probability that an amount exceeding $75,000, exclusive of interest and costs, is in controversy. Defendant asserts that the seventh Circuit specifically held that Illinois federal courts are not limited to a complaint's prayer for relief in assessing the removeability of a state court action. Citing *BEM I.L.L.C. v. Anthropologie, Inc.*, Defendant argues that a court can consider *any* evidence regarding the jurisdictional amount at issue prior to removal. However, contrary to Defendant's contention, the Court's holding was not so broad. Instead, the Seventh Circuit held that "[e]vents subsequent to removal that merely reveal whether the required amount was in dispute on the date of filing, rather than alter the current amount in controversy, can be considered in deciding what that original amount in

controversy was." *BEM I. L.L.C. v. Anthropologie, Inc.*, 2002 WL 1905902, *3 7th Cir. Aug. 20, 2002).

Defendant asserts that after Plaintiffs Black and Lester gave their deposition testimony, it became clear the amount in controversy exceeds $75,000. Defendant argues that both "testified unequivocally that the relief they seek in this case is an injunction requiring GM to establish a program to recall their vehicles and the vehicles of all putative class members that are equipped with the allegedly defective seat belt buckles." (Doc. 17, p, 3). Because complying with such an injunction would cost Defendant more than $75,000, Defendant asserts, the jurisdictional amount in controversy is satisfied. The Court is not persuaded by this argument.

Plaintiffs' complaint seeks damages in an amount sufficient to purchase alternative seat belt buckles. Additionally, Plaintiffs seek punitive damages and attorneys' fees. Plaintiffs' complaint specifically states that the cost of replacement of each Class members seat belt buckle will not exceed $400 (Doc. 2, ¶ 6). Further, the prayer for relief in the complaint requests damages in an amount less than $1,000 (Doc. 2, p.5). However, no where in the complaint do Plaintiffs request injunctive relief. Additionally. Plaintiff Black's testimony that "I would hope that they would recall all these seat belts" and "do whatever it takes to fix them" is hardly competent proof that Plaints seek an injunction. The same is true with Plaintiff Lester's testimony that she wants Defendant to "[r]enlace seat belts that appear to be defective." Plaintiff Lester, herself, admitted that "I don't know all the steps that would be involved in order to make it safer, but, you know, like you said, developing a new buckle, I don't know if that's necessary, but if it is, yes." Therefore, even Plaintiff Lester was unsure of the relief she requests from Defendant.

Furthermore, Defendant latches onto Plaintiff Black's testimony that part of this "recall" would involve sending

notices to people who have one of these vehicles and inform them to bring the vehicle in to have Defendant fix the seat belts. However, as this Court has pointed out in a factually similar case, Defendant "attempts to paint a frightening picture of the administrative headaches and financial costs involved in a complex process of owner identification, owner notification and vehicle inspection. But the complaint does not ask that this process be implemented, and many of the cost listed by [Defendant] would be incurred as part of a normal class action suit." *Phillips v Ford Motor Co.*, No. 99-CV-0964, 2000 WL 1231724, *2 (S.D. Ill. July 7, 2000).

Even if this Court construes Plaintiffs' statements as a request for an injunction, Defendant is still not able to satisfy the jurisdictional amount in controversy. Defendant correctly states that the cost of injunctive relief can be used to satisfy the $75,000 jurisdictional threshold. *Brand Name Prescription Drugs*, 123 F.3d at 609. However, what Defendant apparently asses in its argument is the "no-aggregation" rule. The law is clear that "separate claims of multiple plaintiffs cannot be aggregated to satisfy the jurisdictional amount." *Schreiber v. Lugar*, 518 F.2d 1099, 1102 (7th Cir. 1975). The Seventh Circuit held that "[w]hatever the form of relief sought, each plaintiffs claim must be held separate from each other plaintiffs claim from both the plaintiffs and the defendant's standpoint. The defendant in such a case is deemed to face multiple claims for injunctive relief, each of which must be separately evaluated,, *Brand Name Prescription Drugs*, 123 F.3d at 610.

As this Court noted in *Phillips*, Defendant has not offered any persuasive evidence suggesting that the cost of replacing defective seat belts in any one vehicle (i.e, the per-Plaintiff cost), whether the work is performed at a GM dealership or an independent repair shop, exceeds the $75,000 jurisdictional hurdle. *See Phillips*, No. 99 CV-0964, 2000 WL 1231724, *2 (S.D. Ill. July 7, 2000).

Defendant cites cases from the Northern District of Illinois finding the jurisdictional amount in controversy satisfied based upon the cost of complying with injunctive relief. Defendant asserts that the injunctive relief sought in these cases is similar to the "recall" sought in this case. However, these eases are distinguishable. In *Trujillo v. Bridgestone. Firestone, Inc*, the plaintiffs sought injunctive relief requiring Defendant to *expedite* the current recall that Defendant instituted before suit was filed against it. 2000 WL 1690303, *3 (N.D. Ill. Nov. 1, 2000)(emphasis added). The court found plaintiffs had a "common and undivided interest" in the injunctive relief. *Id.* Because of this, the court found that the entire cost of revamping the recall already in process before suit was filed would exceed $75,000.[2] *Id.* The court found that this was "not a case where the cost of the injunctive relief to Ford is simply the aggregate of all of the claims of individual class members." *Id.*

The same was true in *Jacobean v. Ford Motor Co*, which Defendant also cites in opposition of remand. 1999 WL 966432 (ND. .Ill. Sept. 30, 1999). However, like Trujillo, the plaintiffs in Jacobson sought a "common and undivided interest." *Id.* at *3. The court determined that the plaintiff "apparently seeks to have a court declare that the *general practice* of providing customers with goodwill service on a case-by-case basis is illegal, not just that defendants illegally refused to provide free repaints (or other free services) to some purchasers of 1991 Mercury Sables (or other Ford vehicles)." *Id.* Thus, the court found that Jacobson sought a common and undivided interest for the class and measured the amount in controversy by the value of the declaratory relief sought. *Id.*

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[2] The court stated, "we are convinced that the cost of *redesigning* the recall would exceed the $75,044 amount in controversy requirement." *Id* (emphasis added).

In this case, however, Plaintiffs do not have a common and undivided interest. The cost of injunctive relief to Defendant is the amount required to replace defective seat belt buckles in all Plaintiffs' cars. Each Plaintiff is seeking damages, or as Defendant claims, an injunction requiring Defendant to replace the defective seat belt buckle in their individual car. This means that the cost of injunctive relief to Defendant is "the aggregate of all of the claims of individual class members." *See Trujillo*, 2000 WL, 1690308, at *3. Because of this, the injunctive relief requested is not a common and undivided interest and must be evaluated on a per-Plaintiff. basis. *See Phillips*, No. 99-CV-0964, 2000 WL 1231724, *2 (S.D. Ill, July 7, 2000).

Additionally, although Defendant does not raise this argument in its response, the fact that Plaintiffs request punitive damages does not help Defendant either. Because separate claims of multiple plaintiffs cannot be aggregated, courts look at the amount each defendant risks paying an one plaintiff, not the entire class. *Del Vecchio v. Conseco, Inc.*, 230 F.3d 974, 979 (7th Cir. 2000). Because this is a class action, any award of punitive damages, if there is one, must be spread among the class of plaintiffs to determine the amount in controversy. Plaintiffs have asserted that there are likely thousands of class members In this case. Thus, even a very large punitive damage award, when spread among the class of plaintiffs, will not get any named plaintiff beyond the required jurisdictional floor.

Defendant has not demonstrated with reasonable probability that it risks paying any one plaintiff more than the $75,000 needed to confer subject matter jurisdiction. Therefore, the requirements of the federal diversity statute have not been satisfied. Simply stated, subject matter jurisdiction does not lie here.

III. Conclusion

Because it lacks subject matter jurisdiction, the Court REMANDS this case to the Circuit Court of St. Clair County of St. Clair County, Illinois.

IT IS SO ORDERED.

Signed this 4th day of October 2002.

/s/ David R. Herndon
DAVID R. HERNDON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

No. 02-952 DRH

SHEILA BLACK and CATHERINE LESTER,
individually and on behalf of all others similarly situated,
Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,
Defendant.

PLAINTIFFS' MOTION TO REMAND

Comes now the Plaintiffs by and through their attorneys, COOK, YSURSA, BARTHOLOMEW, BRAUER & SHEVLIN, LTD. and JOSEPH A. BARTHOLOMEW and BRUCE N. COOK, and hereby moves this Honorable Court to remand this action back to State Court for the reasons expressed in the accompanying Memorandum.

Respectfully submitted,

/s/ Joseph A. Bartholomew
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

No. 02-952 DRH

SHEILA BLACK and CATHERINE LESTER,
individually and on behalf of all others similarly situated,
Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,
Defendant.

ORDER

IT IS HEREBY ORDERED that Plaintiffs' Motion to Remand this action back to State Court is hereby granted.

ENTERED: _____

DATE: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

No. 02-952 DRH

SHEILA BLACK and CATHERINE LESTER,
individually and on behalf of all others similarly situated,
Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,
Defendant.

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO REMAND

Comes now the Plaintiffs by and through their attorneys, COOK, YSURSA, BARTHOLOMEW, BRAUER & SHEVLIN, LTD. and JOSEPH A. BARTHOLOMEW and BRUCE N. COOK, and hereby moves this Honorable Court to remand this action back to State Court for the reasons expressed herein:

INTRODUCTION

This action has been pending in State Court for eight months. After enduring numerous adverse State Court rulings, the Defendant now seeks salvation in Federal Court by ignoring the Complaint and its prayer for relief. The Defendant's frivolous removal of this action ignores the basic principles of removal of jurisdiction; namely that the courts will strictly construe their removal jurisdiction and that the basis for that jurisdiction must be contained in the plaintiffs complaint.

FACTUAL BACKGROUND

On or about January 31, 2002 Plaintiffs filed this class action lawsuit seeking damages under the Illinois Consumer Fraud Act for the Defendant's concealment of a major defect in its seatbelt buckles on certain vehicles, causing the buckles to open in certain accident scenarios. Specifically, the relief sought by the Plaintiffs by their State Court complaint was;

a. to declare this action as a class action;

b. to award class members damages in an amount sufficient to purchase inertial release resistant seatbelt buckles to replace the defective type VI side buckles;

c. an award punitive or exemplary damages to the extent permitted by the Illinois Consumer Fraud Act not to exceed three tames the compensatory award requested; and

d. award attorneys fees in an amount not to exceed one third the total amount of compensatory and punitive damages per individual plaintiff class member.

The Defendant readily admits that this case was not removable based on the Plaintiffs' complaint. However, in a convoluted fashion, it now seeks removal based on the theory that the Plaintiffs are seeking equitable relief and such equitable relief will cost the Defendant more than $75,000.00. Notwithstanding its flawed legal analysis, nowhere in the Plaintiffs' complaint does the Plaintiff seek injunctive relief.

ARGUMENT

To remove a case to Federal Court, a Defendant must establish the jurisdictional requirements with "competent proof' evidence which proves to a reasonable probability that jurisdiction exists. 28 U.S.C. § 1332,1441; *Chase v. Shop 'N Save Warehouse Foods Inc.*, 110 F. 3d 424 (7th Cir.1997). Removal based on diversity requires that the parties be diverse state citizens and the amount in controversy exceeds

$75,000.00. 28 U.S.C. § 1332. The party seeking removal has the burden of establishing Federal Jurisdiction. *Doe v. Allied-Signal, Inc.*, 985 F.2d 908, 911(7th Cir.1993). Removal from State Court is permitted only if the Federal Jurisdiction existed at the time of removal. 28 U.S.C. Section 14419(a). Courts should interpret the removal statute narrowly and presume that the plaintiff may choose his or her forum. Doe, 985 F.2d at 911. Accordingly, there is a strong presumption in favor of remand. *Jones v. General Tire and Rubber Company*, 541 F.2d 660, 664 (7th Cir.1976).

Removal is proper only when the requisite amount in controversy is manifest from a reasonable reading of the complaint. *Tylka v. Gerber Products Company*, 211 F3 d 445 (7th Cir.2000). It is the defendant's burden to establish the amount in controversy to a reasonable probability. *Shaw v. Dow Brands, Inc.*, 994 F.2d 364, 366 (7th Cir.1993). The allegations and prayer for relief contained in the State Court complaint form the basis of jurisdiction inquiry. *Hasek v. Chrysler Corporation.*, 1996 WL 48602, N.D. Ill., 1996 (Feb. 5, 1996).

As stated in the factual background above, nowhere in the Plaintiffs' complaint do the Plaintiffs seek injunctive or equitable relief. Furthermore, as the Defendant admits in its removal petition, the original complaint does not provide a basis for removal based on the damage request. The Defendant bases this removal on statements made by the Plaintiffs in their depositions as to "their understanding and desires" for the lawsuit! However, the Defendant cannot provide a citation to support such a notion for removal. Notwithstanding the Defendant's position, the Plaintiffs readily admit that they are relying totally on their counsel, and have not seen the complaint. What the Plaintiffs want out of this lawsuit and what they have asked for formally in their complaint are separate issues. The relief requested by the

Plaintiffs is contained in their complaint, which is specific and does not include injunctive relief.

Accordingly, the Plaintiffs action should be remanded.

Respectful submitted,

/s/ Joseph A. Bartholomew, Esq.
JOSEPH A. BARTHOLOMEW
COOK, YSURSA, BARTHOLOMEW,
BRAUER, & SHEVLIN, LTD.
12 West Lincoln Street
Belleville, IL 62220
(618) 235-3500
(618) 235-7286 (fax)

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

No. 02 L 57

SHEILA BLACK and CATHERINE LESTER,
individually and on behalf of all others similarly situated,
Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,
Defendants.

AFFIDAVIT OF HASSAN M. EL-SABEH

Hassan M. El-Sabeh, being duly sworn, deposes and says:

1. I am over the age of 18 and have personal knowledge of the facts stated herein. If called and sworn as a witness, I can and would testify competently to the facts set forth in this Affidavit.

2. I am now and have been since 1983 employed by General Motors Corporation ("General Motors"). I am employed as a Senior Engineer with the Field Performance Assessment Croup of the Safety Center of 'oath American Product Development Organization located at the General Motors .Technical .Center in Warren, Michigan. My responsibilities include, but are not limited to, evaluation of safety and performance aspects of vehicle systems and assemblies, including those that have become the subject of claims against General Motors.

3. I attended Wayne State University, from which I received Bachelor and Master of Science degrees in. Mechanical 'Engineering. During my employment by General Motors, I have been involved in the design,

development; testing, product development engineering, manufacturing processes, and vehicle assembly procedures of General Motors vehicles and field performance evaluation of different model vehicles assembled by General Motors.

4. My present responsibilities include, but are not limited to, engineering evaluation of allegations of defects in vehicle seatbelt systems, including seatbelt buckles, in General Motors vehicles. In addition, I. have extensive experience with the design, development and testing of vehicles seatbelt systems, including seatbelt buses and the requirement of the applicable federal motor vehicle safety standards 208, 249 and 210 for vehicle seatbelt systems.

5. General Motors designs, develops and tests seatbelt systems, including the webbing, buckle, refractors and other components, as an entire seem. Different seatbelt systems with similar buckles are designed, developed and tested to perform iii the wide variety of different model vehicles with different equipment.

6. I have been informed that the plaintiffs in this case are requesting that the Court order General Motors, to recall the different model General Motors vehicles in Illinois equipped with Type 6 seatbelt buckles and replace the buckles with different seatbelt buckles that are not subject to inertially unlatch in forseeable accidents.

7. Since plaintiffs are claiming that the buckles designed, developed and tested for the different model vehicles included in this lawsuit are defective, a different buckle design would be required. Therefore, for General Motors to comply with an order of the nature requested by plaintiffs would require that Genera Motors test such replacement t buckles for compliance with applicable General Motors standards and FMVSS 208, 209 and 210.

8. The cost to General Motors just to test a replacement buckle for the Type 6 buckles that are the subject of this case

would exceed $75,000. That cost would exceed $75,040 recess of whether the replacement buckles were required for a single vehicle with a Type 6 buckle or for all the different models of General Motors vehicles in Illinois with Type 6 buckles.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 2002.

/s/ Hassan M. El-Sabeh
HASSID M. EL-SABEH

Subscribed to and sworn before me this 14th day of August, 2002.

Sheila D. White
SHEILA D. WHITE
Notary Public

[1]

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

No. 02-L-57

SHEILA BLACK and CATHERINE LESTER,
individually and on behalf of
others similarly situated,
Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,
Defendant.

Discovery Deposition of
CATHERINE LESTER
Taken July 18, 2002

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REPORTER: Nancy Naas Harmon, CSR, RPR
Illinois License #084-003219

Keefe Reporting Company
11 North 44th Street
Belleville, Illinois 62226

[2]

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

No. 02-L-57

SHEILA BLACK and CATHERINE LESTER,
individually and on behalf of
others similarly situated,
Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,
Defendant.

APPEARANCES:

For Plaintiff: Cook, Ysursa, Bartholomew, Brauer & Shevlin, LTD.
by Mary Mansfield Brauer, Esq.

For Defendant: Kirkland & Ellis
by Robert B. Ellis, Esq.

Greensfelder, Hemker & Gale
by Russell K. Scott, Esq.

* * * *

[3] IT IS STIPULATED AND AGREED by and between counsel for Plaintiffs and counsel for Defendant that the deposition of CATHERINE LESTER may be taken for discovery purposes pursuant to and in accordance with the provisions of the Illinois Code of Civil Procedure and Supreme Court Rules pertaining to such depositions, by and

on behalf of the Defendant on July 18, 2002, at the law offices of Cook, Ysursa, Bartholomew, Brauer & Shevlin, Ltd., 12 West Lincoln Street, Belleville, Illinois, before Nancy Naas Harmon, Certified Shorthand Reporter, Registered Professional Reporter; that the issuance of notice is waived; and that this deposition may be taken with the same force and effect as if all statutory requirements had been complied with.

IT IS FURTHER STIPULATED AND AGREED that the signature of the deponent is waived.

CATHERINE LESTER, produced, sworn, and examined as a witness on behalf of the Defendant, testified and deposed as follows:

[4] CROSS-EXAMINATION

BY MR. ELLIS:

Q. Would you state your full name for the record, please.
A. Catherine Mary Lester.
Q. I know you've given a deposition before. I've read at least one of them, so you understand how this works. I'm going to ask you a series of questions. If you don't understand any of my questions, will you tell me that?
A. Uh-huh.
Q. And one of the things that you need to do is give yes and no answers.
A. Yes, I will.
Q. If I ask you a question and you give me an answer, I'm going to assume that you understood it. That's fair, right?
A. Yes, I would make that assumption.
Q. Mrs. Lester, can you tell me the relief that you seek in this lawsuit.
A. I don't understand your question.
Q. This case you have an understanding is a different case than the lawsuit that you brought arising [5] out of the death of your daughter, Sarah, correct?

A. Yes.

Q. And can you tell me the relief you seek, what you want General Motors to do in connection with this lawsuit?

A. Replace seat belts that appear to be defective.

Q. Okay. So what you would like the Court to do is order GM to develop a buckle to replace the buckle that's in the vehicles and then order GM to replace those buckles on all the vehicles that have them; is that right?

A. I don't know all the steps that would have to be involved in order to make it safer but, you know, like you said, developing a new buckle, I don't know if that's necessary, but if it is, yes.

Q. Then that's what you want, correct?

A. I just want buckles not to come unlatched like it appears that it did in our case.

Q. Okay. And so if I understand it then, what you want is an order from the Court ordering GM to go out and replace the buckles; is that correct?

MS. BRAUER: Objection, asked and answered, repetitive. She's already answered the question.

* * * *

[1]

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

No. 02-L-57

SHEILA BLACK and CATHERINE LESTER,
Individually and on behalf of
others similarly situated,
Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,
Defendant.

Discovery Deposition of
SHELIA COOK
Taken July 18, 2002

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REPORTER: Nancy Naas Harmon, CSR, RPR
Illinois License #084-003219

Keefe Reporting Company
11 North 44th Street
Belleville, Illinois 62226

* * * *

[10] Q. Have you ever gotten a ticket for anything other than speeding or going through a red light or a stop sign?
A. I did. Actually, yes, when I was 17 I got a ticket for possession of alcohol, but that was the only—Other than that, I've just had speeding tickets.
Q. How did you first decide to file a class action against General Motors?
A. I talked to Bruce about it, and basically he was the one that kind of had said that I had a Pontiac GrandAm, my seat belts were broke, and he basically then handled it for me.
Q. And was the class action that you filed in connection—When you say your seat belts were broke, are you talking about the broken part on the rear seat belt buckle of your GrandAm?
A. Yes. Yes.
Q. And so was it your understanding then that your class action was brought because the seat belt buckle was broken?
A. I don't think that's what initially started it, no.
Q. Okay.
A. I think that he just noticed I had the [11] certain type of seat belts that he was I guess investigating, looking for.
Q. Okay. So as far as you were concerned, you had a car that had this certain kind of seat belt and so you could be a representative of a class; is that right?
A. That's correct.
Q. And that's something Bruce came to you and said, you know, You've got one of these cars, so why don't you be a representative in my lawsuit?
A. Yes.
Q. What relief are you seeking in this lawsuit?
A. That the seat belts will be safe.
Q. And can you tell me specifically what you're seeking to have General Motors do in order to make the seat belts safe?
A. I would hope that they would recall all these seat belts.

Q. And so what you want the Court to do is to order General Motors to recall the seat belts and do whatever it takes to fix them; is that right?

A. That's correct.

Q. And I take it that part of that recall that you want to happen would involve sending a notice to [12] people who have one of these vehicles and say, you know, initiate a notice campaign to tell people to bring it in and have General Motors fix your seat belt?

A. Correct.

Q. Do you know Catherine Lester?

A. I just met her.

Q. Okay. Today was the first time you met her?

A. Today was the first day, and it was passing in the hall.

Q. So then I take it you've never sat down with Catherine Lester to discuss this lawsuit?

A. No. No.

Q. How about her husband James; you never met him I take it?

A. No, never met him.

Q. Do you know a person names Joyce Laux, L-a-u-x?

A. No.

Q. I'll ask you some questions now about the different vehicles you've owned over time.

A. Okay.

Q. What is the current vehicle that you drive?

A. It is a Pontiac Grand Prix.

[13] Q. And what year is the Pontiac Grand Prix?

A. It is a 2000.

Q. Did you buy the 2000 Pontiac Grand Prix?

A. Bruce, Bruce R.

Q. How long have you driven that car?

A. Four months.

Q. After you were engaged?

A. Yes.

Q. Did Bruce R. buy the car for you?

A. Yes.
Q. This wasn't a car he already had?
A. No.
Q. You guys went out to buy it?
A. Right.
Q. Did you go buy it together?
A. Yes. Well, actually I looked at it, I drove it, and then he looked at it. We didn't actually go together.
Q. Okay. Okay. You went, you looked at it?
A. We both made the decision together to go ahead and buy it, but—
Q. But you looked at it at different times?
A. Right. Right.
Q. where did you buy the vehicle from?

* * * *

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

[Filed May 21, 2002]

No. 02-L-57

SHEILA BLACK and CATHERINE LESTER,
individually and on behalf of all others similarly situated,
Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,
Defendant.

ORDER

Before the Court is the Plaintiffs' Motion for Class Certification. The Court notes that the Defendant has answered the complaint and the Court has denied the Defendant's 5/2-619 motion and has found that the Plaintiffs' pleadings support a cause of action under Illinois law. Accordingly the Court makes the following findings pursuant to ILCS 735 5/2-801:

1. As has been stipulated to by the Defendant, that the class of individuals identified in the Plaintiffs' complaint is so numerous that joinder of all members is impractical;

2. There are questions of law and fact common to all class members which common questions predominate over any questions affecting only individual members;

3. The representative Plaintiffs, Sheila Black and Catherine Lester, will thoroughly and adequately protect the interest of the class, and that class counsel are versed in all issues in this case and will adequately and fairly represent all class members;

4. A class action is an appropriate method for fair and efficient adjudication of the controversy as set forth in the pleadings.

Furthermore, the Court finds pursuant to 735 ILCS 5/2 802 that this action may be maintained as a class action and hereby certifies the class as follows: All residents of the State of Illinois who purchased in the State of Illinois for individual use and presently own a General Motors vehicle equipped with type VI seat belt buckles, excluding any individual herein who allegedly suffered personal injuries as a result of a General Motors type VI buckle. The Court is of the understanding that the Defendant General Motors has agreed to produce to the Court and counsel for the class a list of all vehicles equipped with type VI seat belt buckles within seven (7) days. Upon receipt of this information, the Court will consider the issue of the appropriate notice to be sent to the class members.

SO ORDERED.

/s/ Stephen M. Kernan
HONORABLE STEPHEN M. KERNAN

COOK, YSURSA, BARTHOLOMEW,
BRAUER & SHEVLIN, LTD.
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12 West Lincoln Street
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Of Counsel:

Dennis W. Shevlin
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*Licensed in Illinois and Missouri

May 15, 2002

The Honorable Stephen Kernan
St. Clair County Circuit Court
St. Clair County Building
#10 Public Square
Belleville, Illinois 62220

Re: Sheila Black and Cathy Lester v. General Motors Corporation
No. 02 L 57
Russell Scott's letter of May 10, 2002

Dear Judge Kernan:

We cannot go any further until you have resolved the issue of the class. Therefore, we request that you sign our proposed order. The defendant has the option of making attacks on the class, no matter how spurious, after the class is declared. This is just a delaying action on their part as they

know, and it should be evident by Mr. Cooper's testimony, that the proposed class is righteous.

Respectfully,

/s/ Bruce N. Cook
BRUCE N. COOK

BNC/jah

cc: Russell Scott
Robert Ellis

IN THE CIRCUIT COURT
TWENTIETH JUDICAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

[Filed May 09-2002]

No.02 L 57

SHEILA BLACK and CATHERINE LESTER,
individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

SECOND AMENDED COMPLAINT

COME NOW the plaintiffs Sheila Black and Catherine Lester, by their attorneys, Bruce N Cook and Joseph A. Bartholomew, and for their *Second Amended* Complaint against the defendant, General Motors Corporation, states:

1. That on or about November 1997, in. the City of Belleville, County of St, Clair and State of Illinois, plaintiff, Sheila Black, an Illinois resident, purchased and now owns a 1994 Pontiac Grand Am., YIN a G2NE5537RC752003. Said vehicle was manufactured and placed in commerce by defendant General Motors Corporation, a corporation in the business of the manufacture and sale of motor vehicles.

2. That on or about September 11, 1998 the plaintiff, Catherine Lester, purchased and now owns a 1990 Chevrolet

Lumina, VIN #2G1WL54T0L1134110. Said vehicle was manufactured and placed in commerce bar defendant General Motors Corporation, a corporation.

3. That at said time and place, and at the time the plaintiffs' vehicles were manufactured and sold by defendant It was equipped with a restraint system incorporating Type VI seatbelt buckles and that defendant knew at the time of the manufacture and sale of the vehicle that Type VI seatbelt buckles were defective in that:

(a) they would open or could unlatch from inertial forces during foreseeable vehicular accidents.

(b) *that buckle housing was made of plastic that was subject to breakage making the seatbelt buckle susceptible to inadvertent unlatching in foreseeable accidents.*

and that placing said vehicles with defective seatbelt buckles in the stream of commerce is a deceptive practice grad violates the Illinois "Deceptive practice Act" 815 ILLS 50511 *et seq.*

4. What defendant, beginning in model year 1985 through 1995, equipped models of its vehicles for sale in the State of Illinois, with defective Type VI seatbelt buckles it knew to be defective without warning that a properly restrained passengers seatbelts night open during a foreseeable accident.

5. That defendant developed seatbelt buckles to replace the side release Type VI buckle on vehicles manufactured by it that would not open or unlatch from inertial forces in foreseeable accidents, however, defendant did not release said replacement side release buckles for use, sale or replacement or notify consumers of the availability of the inertial release resistant side release seatbelt buckles.

6. Despite the above knowledge, the defendant, General Motors Corporation, by and through its agents, failed to recall or replace the Type VI seatbelt buckles, failed to warn its customers and owners of automobiles equipped with Type VI seatbelt buckles that the buckles could initially unlatch *or inadvertently unlatch in foreseeable accidents.*

7. That equipping the said vehicles with defective Type VI seatbelt buckles diminishes the resale value of the vehicles.

8. That on information and belief, the cost of replacement to each Class member of the inertial release resistant side release side release buckles will not exceed $400.00 per vehicle.

CLASS ALLEGATIONS

9. Plaintiffs bring this action pursuant to 735 ILCS 5/2-801 on behalf of the Class of all individuals from the State of Illinois who purchased in Illinois General Motors vehicles for personal use equipped with Type VI side release seatbelt buckle.

10. The plaintiffs are a member of the Class and will fairly and adequately assert and protect the interest of the Class. The interest of the plaintiffs is coincident with and not antagonistic to those other members of the Class and the plaintiffs have no interest that is antagonistic to or in conflict with the Interest of the Class. In addition, the plaintiffs have retained competent counsel experienced in this type of complex civil litigation to further ensure such protection and intent to prosecute this action vigorously.

11. The members of the Class are so numerous that joiner of all the members is impractical. The precise number of the members of the Class is unknown to plaintiffs at the present time, but it is believed, based on the nature and scope of the wrongdoing complained hereof to be in the hundreds of

thousands of so equipped vehicles owned by Illinois residents. The names and addresses of each member of the Class can be ascertained from the boobs and records of the defendant, their agents and other sources.

12. A Class Action is an appropriate method for Fair and efficient adjudication of the controversy. Since the damages suffered by the individual member of the Class may be small relative to the expense and burden of litigation, it will be virtually impossible for any Class member to seek redress individually for the wrongful conduct alleged, floe plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

13 There are questions of fact and law common to each Class member which predominate over any questions affecting only individual members. Among the questions of law and fact common to the Class are:

A. Is the defendant General Motors liable for violations of the Consumer Fraud and Deceptive Business Act 815 ILCS 50512 *et seq*., and

B. Whether the plaintiffs and Class members are entitled to damages.

14. Class certification is appropriate because the prosecution of separate actions would create the risk of adjudication with respect to individual members of the Class which would as a practical matter, be dispositive of issues of all other members not panics to the adjudication. Further, the prosecution of separate actions by individual members of the Class would create an unnecessary risk of inconsistent or varying adjudication with respect to the individual members of the Class which would establish incompatible standards of conduct for the defendant.

VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE PRACTICES ACT 815 ILCS 502/2 *et seq.*

15. The Illinois Consumer Fraud and Deceptive Business Practices Act, prohibits "unfair or deceptive acts or practices, including but not limited to the use of employment of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others rely upon the concealment, suppression or omission of such material fact in the conduct of any trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby." "Trade" or "commerce" is defined to include "the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situated, and . . . any trade or commerce directly or indirectly affecting the people of this State." 815 ILCS 505/1.

16. Wherein the defendant, General Motors Corporation, by and through its agents has violated 815 ILCS 505/2 by engaging in unfair and deceptive acts and practices, including, but not limited to, concealing, suppression and omitting material facts concerning the safety of its automobiles quipped with Type VI side release seatbelt buses with the intent that the plaintiffs and members of the a Class rely upon such concealment, suppression and omission of material fact in connection with the sale and distribution of its automobiles within the State of Illinois

WHEREFORE, the plaintiffs pray the Court enter judgment for compensatory damages for plaintiffs and each individual Class member in an amount less than $1,000.00 and the Court additionally order as follows:

A. That the Court declare this action to be a class action properly maintained pursuant to 735 ILCS

5/2-801 and certify plaintiffs, Shelia Black and Catherine Lester, as representatives of the Class;

B. To award Class members damages in an amount sufficient to purchase inertial resistant seatbelt buckles to replace the defective Type VI side buckles;

C. Award punitive or exemplary damages to the extent permitted by the Illinois Consumer Fraud Act not to exceed three times the compensatory award requested, and

D. Award attorneys fees in an amount not to exceed one-third the total amount of compensatory and punitive damages per individual plaintiff Class member.

/s/ Bruce N. Cook
BRUCE N. COOK
Attorney for Plaintiffs
IL Bar #00507660

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

[Filed April 4, 2002]

No. 02 L 57

SHEILA BLACK and CATHERINE LESTER,
individually and on behalf of all others similarly situated,
Plaintiffs,

vs

GENERAL MOTORS CORPORATION,
Defendant.

FIRST AMENDED COMPLAINT

COME NOW the plaintiffs Sheila Black and Catherine Lester, by their attorneys, Bruce N. Cook and Joseph A. Bartholomew, and for their Complaint against the defendant, General Motors Corporation, states:

1. That on or about November 1997.. in the City of Belleville, County of St. Clair and State of Illinois, plaintiff, Sheila Black, an Illinois resident, purchased and now ovens a 1994 Pontiac Grand Am,, VIN 1G2NE5537RC752003, Said vehicle was manufactured and placed in commerce by defendant General Motors Corporation, a corporation in the business of the manufacture and sale of motor vehicles.

2. That on or about September 11, 1998, the plaintiff, Catherine Lester, purchased and now owns a 1940 Chevrolet Lumina, VIN #2GIWL54T0L1134110. Said vehicle was manufactured and placed in commerce by defendant General Motors Corporation, a corporation.

3. That at said time and place, and at the time the plaintiffs' vehicles were manufactured and sold by defendant it was equipped with a restraint system incorporating Type VI seatbelt buckles and that defendant knew at the time of the manufacture and gale of the vehicle that Type Vi seatbelt buckles were defective in that they would open or could unlatch from inertial forces during foreseeable vehicular accidents and that placing said vehicles with defective seatbelt buckles in the stream of commerce is a deceptive practice and violates the Illinois "Deceptive Practice Act" 815 ILCS 505/1 *et seq*.

4. That defendant, beginning in model year 1985 through 1995, equipped models of its vehicles for sale in the State of illinois, with defective Type V1 seatbelt buckles it knew to be defective without warning that a properly restrained passengers seatbelts right open during a foreseeable accident.

5. That defendant developed seatbelt buckles to replace the side release Type VI buckle on vehicles manufactured by it that would not open or unlatch from inertial forces in foreseeable accidents, however, defendant did not release said replacement side release buckles for use, salē or replacement or notify consumers of the availability of the inertial release resistant side release seatbelt buckles.

6. Despite the above knowledge, the defendant, general Motors Corporation, by and through its agents, failed to recall or replace the Type VI seatbelt buckles, failed to warm its customers and owners of automobiles equipped with Type VT seatbelt buckles that the buckles could initially unlatch in foreseeable accidents.

7. That on information and belief, the cost of replacement to each Class member of the inertial release resistant side release buckles will not exceed $400,00 per vehicle.

CLASS ALLEGATIONS

8. Plaintiffs bring this action pursuant to 735 ILCS 5/2-801 on, behalf of the Class of all individuals from the State of Illinois who purchased in Illinois General Motors vehicles for personal use equipped with Type VI side release seatbelt buckle,

9. The plaintiffs are a member o f the Class and will fairly and adequately assert and protect the interest of the Class. The interest of the plaintiffs is coincident with and not antagonistic to those other members of the Class and the plaintiffs have no interest that is antagonistic to or in conflict with the interest of the Class. In addition, the plaintiffs have retained competent counsel experienced in thus type of complex civil litigation to further ensure such protection and intent to prosecute dais action vigorously.

10. The members of the Class arc so numerous that joiner of all the members is impractical. The precise number of the members of the Class is unknown to plaintiffs at the preset time, but it is believed., based on the nature and scope of the wrongdoing complained hereof to be in the hundreds of thousands of so equipped vehicles owned by Illinois residents. The names and addresses of each member of the Class can be ascertained from the books and records of the defendant, their agents and other sources,

11. A Class Action is an appropriate method for fair and efficient adjudication of the controversy. Since the damages suffered by the individual members of the Class may be small relative to the expense and burden of litigation, it will be virtually impossible for any Class member to seek redress individually for the wrongful conduct alleged. The plaintiffs know of no difficulty that will be encountered in the management of. this litigation that would preclude its maintenance as a class action.

12. There arc questions of fact and law common to each Class member which predominate over any questions affecting only individual members. Among the questions of law and fact common to the Class are:

A. Is the defendant General Motors liable for violations of the Consumer Fraud and Deceptive Business Act 815 ILLS 50512 *et seq.*; and

B. Whether the plaintiffs and Class members are entitled to damages.

13. Class certification is appropriate because the prosecution off separate actions would create the risk of adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of issues of all other members not parties to the adjudication. Further, the prosecution of separate actions by individual members of the Class would create an unnecessary risk o `inconsistent or varying adjudications with respect to the individual members of the Class which would establish incompatible standards of conduct for the defendant.

VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE PRACTICES ACT 815 ILCS 505/2 *et seq.*,

14. The Illinois Consumer Fraud and Deceptive Business Practices ,pct, prohibits "unfair or deceptive acts or practices, including but not limited to the use of employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact with the intent that others rely upon the concealment, suppression or omission of such material fact in the conduct of any trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby." "Trade" or "coerce" is defined to include "the advertising, offering for sale, sale, or distribution of any services and any property,

tangible or intangible, real., personal or mixed, and any other article, commodity or thug of value wherever situated, and . . . any trade or commerce directly or indirectly affecting the people of this State." 815 ILCS 505/1.

15. Wherein the defendant, General Motors Corporation, by and through its agents has violated 815 ILCS 50512 by engaging in unfair and deceptive acts and practices, including, but not limited to, concealing, suppression and omitting material facts concerning the safety of its automobiles equipped with Type VI side release seatbelt buckles with the tent that the plaintiffs and members of the Class rely upon such concealment, suppression and omission of material fact in connection with the sale and distribution of its automobiles within the State of Illinois.

WHEREFORE, the plaintiffs pray the Corms enter judgment for compensatory damages for plaintiffs and each individual Class member in an amount less than. $1,000,00 and the Court additionally order as follows:

A. That the Court declare this action to be a class action properly maintained pursuant to 735 ILCS 512-801 and certify plaintiffs, Sheila Black and Catherine Lester, as representatives off the Class;

B. To award Class members damages in an amount sufficient to purchase inertial resistant seatbelt buckles to replace the defective Type VI side buckles:

C. Award punitive or exemplary damages to the extent permitted by the Illinois Consumer Fraud Act not to exceed three times the compensatory award requested; and

D. Award attorneys fees in an amount not to exceed one-third the total amount of compensatory and punitive damages per individual plaintiff Class member.

/s/ Bruce N. Cook
BRUCE N. COOK
Attorney for Plaintiffs
IL BAR #00507660

/s/ Joseph A. Bartholomew
JOSEPH A. BARTHOLOMEW
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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

[Filed Jan. 25, 2002]

No. 02 L 57
Deceptive Practice
(Class Action)

SHEILA BLACK individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

GENERAL, MOTORS CORPORATION,

Defendant.

COMPLAINT

COMES NOW the plaintiff, Sheila Black, by her attorneys, Bruce N. Cook and Joseph A. Bartholomew, and for her Complaint against the defendant, General Motors Corporation, states;

1. That on or about November 1997, in the City of Belleville, County of St. Clair and State of Illinois, plaintiff, Sheila Black, an Illinois resident, purchased and now owns a 1994 Pontiac Grand Am, VIN 1 G2NB5537RC752003. Said vehicle was manufactured and placed in commerce by defendant General Motors Corporation, a corporation in the business of the manufacture and sale of motor vehicles.

2. That at said time and place, and at the time the vehicle was manufactured and sold by defendant it was equipped with a restraint system incorporating Type VI seatbelt buckles and that defendant knew at the time of the manufacture and sale of the vehicle that Type VI seatbelt buckles were

defective in that they would open or could unlatch from inertial forces during foreseeable vehicular accidents and that placing said vehicles with defective seatbelt buckles in the stream of commerce is a deceptive practice and violates the Illinois "Deceptive Practice ,Act" 815 ILCS 505/1 *et se.*

3. That defendant, beginning in model year 19$5 through 1995, equipped models of its vehicles for sale in the State of Illinois, with defective Type VI seatbelt buckles it knew to be defective without warning that a properly restrained passengers seatbelts might open during a foreseeable accident.

4. That defendant developed seatbelt buckles to replace the side release Type VI buckle on vehicles manufactured by it that would not open or unlatch from inertial forces in foreseeable accidents, however, defendant did not release said replacement side release buckles for use, sale or replacement or notify consumers of the availability of the inertial release resistant side release seatbelt buckles.

5. Despite the above Knowledge, the defendant, General Motors Corporation, by and through its agents, failed to recall or replace the Type VI seatbelt buckles, failed to warn its customers and owners of automobiles equipped with Type VI seatbelt buckles that the buckles could inertially unlatch in foreseeable accidents.

6. That on information and belief, the cost of replacement to each Class member of the inertial release resistant side release buckles will not exceed $400.00 per vehicle.

CLASS ALLEGATIONS

7. Plaintiff brings this action pursuant to 735 ILCS 512-801 on behalf of the Class of all individuals from the State of Illinois who purchased in Illinois General Motors vehicles for personal use equipped with Type VI side release seatbelt buckle.

8. The plaintiff is a member of the Class and will fairly and adequately assert and protect the interest of the Class- The interest of the plaintiff is coincident with and not antagonistic to those other members of the Class and the plaintiff has no interest that is antagonistic to or in conflict with the interest of the Class. In addition, the plaintiff has retained competent counsel experienced in this type of complex civil litigation to further ensure such protection and intent to prosecute this action vigorously.

9. The members of the Class are so numerous that joiner of all the members: is impractical. The precise number of the members of the Class is unknown to plaintiff at the present time, but it is believed, based on the nature and scope of the wrongdoing complained hereof to be in the hundreds of thousands of so equipped vehicles owned bar Illinois residents. The names and addresses of each member of the Class can be ascertained from the books and records of the defendant, them agents and other sources.

10. A Class Action is an appropriate method for fair and efficient adjudication of the controversy. Since the damages suffered by the individual members of the Class may be small relative to the expense and burden of litigation, it will be virtually impossible for any Class member to seek redress individually for the wrongful conduct alleged. The plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

11. There are questions of fact and law common to each Class member which predominate over any questions affecting only individual members. Among the questions of law and fact common to the Class are:

A. Is the defendant General Motors liable for violations of the Consumer Fraud and Deceptive Business Act 815 ILCS 50512 *et seq.*; and

B. Whether the plaintiff and Class members are entitled to damages.

12. Class certification is appropriate because the prosecution of separate actions would create the risk of adjudications with respect to individual members of the Class which . would, as a practical matter, be dispositive of issues of all other members not parties to the adjudication. Further, the prosecution of separate actions by individual members of the Class would create an unnecessary risk of inconsistent or varying adjudication's with respect to the individual members of the Class which would establish incompatible standards of conduct for the defendant.

VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE PRACTICES ACT 815 ILCS 505/2 *et seq.*

13. The Illinois Consumer Fraud and Deceptive Business Practices Act, prohibits "unfair or deceptive acts or practices, including but not limited to the use of employment of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others rely upon the concealment, suppression or omission of such material fact in the conduct of any trade or commerce ... whether any person has in fact been misled, deceived or damaged thereby." "Trade" or "commerce" is defined to include "the advertising, offering for sale sale or distribution of any services and any property, tangible or intangible, real, personal or nixed, and any other article, commodity or thing of value wherever situated, and . . . any trade or commerce directly or indirectly affecting the people of this State." 815 ILCS 505/1.

14. Wherein the defendant, General Motors Corporation, by and through its agents has violated 815 ILCS 505/2 by engaging in unfair and deceptive acts and practices, including, but not limited to, concealing, suppression and omitting

material facts concerning the safety of its automobiles equipped with Type VI side release seatbelt buckles with the intent that the plaintiff and members of the Class rely upon such concealment, suppression and omission of material fact in connection with the sale and distribution of its automobiles within the State of Illinois.

WHEREFORE, the plaintiff prays the Court enter judgment for compensatory damages for plaintiff and each individual Class member in an amount less than $1,000.00 and the Court additionally order as follows:

A. That the Court declare thus action to be a class action properly maintained pursuant to 735 I1 CS 512-801 and certify plaintiff, Sheila Black, as representative of the Class;

B. To award Class members damages in an amount suffcient to purchase inertial resistant seatbelt buckles to replace the defective Type VI side buckles;

C. Award punitive or exemplary damages to the extent permitted by the Illinois Consumer Fraud Act not to exceed three times the compensatory award requested; and

D. Award attorneys fees in an amount not to exceed one-third the total amount of compensatory and punitive damages per individual plaintiff Class member.

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